

## 2933.203

(c) *Protests after award.* The authority of the HCA under FAR 33.104(c) to authorize contract performance when the agency has received notice from the GAO of a protest filed directly with the GAO is nondelegable. The HCA has the responsibility to prepare and provide to the GAO the written finding with the information required by FAR 33.104(c)(2). The written finding must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO.

(d) *Notice to the GAO.* The authority of the HCA under FAR 33.104(g), to report to the GAO the failure to fully implement the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, is nondelegable. The written notice must be coordinated with the Office of the Solicitor before the notice is signed by the HCA and sent to the GAO. A copy of all notices to the GAO submitted in accordance with FAR 33.104(g) must be provided to the Senior Procurement Executive within (two) working days after they are sent to the GAO.

### Subpart 2933.2—Disputes and Appeals

#### 2933.203 Applicability.

The authority of the Agency Head to determine that the application of the Contract Disputes Act of 1978 to any contract with a foreign government or agency of that government, or an international organization or a subsidiary body of that organization, would not be in the public interest is delegated to the HCA.

#### 2933.209 Suspected fraudulent claims.

The contracting officer must refer all matters relating to suspected fraudulent claims by a contractor under the conditions in FAR 33.209 to the Office of the Inspector General for further action or investigation.

#### 2933.211 Contracting officer's decision.

The written decision required by FAR 33.211(a)(4) must include, in the paragraph listed under FAR 33.211(a)(4)(v), specific reference to the Department of Labor Board of Contract

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Appeals (LBCA), 800 K Street, NW, Suite 400 North, Washington, DC 20001-8002.

#### 2933.212 Contracting officer's duties upon appeal.

(a) When a notice of appeal has been received, the contracting officer must endorse on the appeal the date of mailing (or the date of receipt if the notice was not mailed). The contracting officer must also notify the Solicitor of Labor of the appeal.

(b) The contracting officer should prepare and transmit the administrative file for the Office of the Solicitor and assist with the appeal.

#### 2933.213 Obligation to continue performance.

The contracting officer must include the clause at FAR 52.233-1, Disputes (Alternate I), in contracts where continued performance is necessary pending resolution of any claim arising under or relating to the contract.

#### 2933.270 Department of Labor Board of Contract Appeals.

(a) The Department of Labor Board of Contract Appeals (LBCA) is authorized by the Secretary to consider and determine appeals from decisions of contracting officers arising under a contract, or relating to a contract, made by the Department or any other executive agency when such agency or the Administrator of the Office of Federal Procurement Policy has designated the LBCA to decide the appeal.

(b) The LBCA rules of procedure are contained in 41 CFR part 29-60.104, appearing in the July 1, 1983, edition of 41 CFR, subtitle A, chapters 19-100.

## PARTS 2934-2935 [RESERVED]

## PART 2936—CONSTRUCTION AND ARCHITECT—ENGINEER CONTRACTS

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2936.604 Performance evaluation.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### Subpart 2936.2—Special Aspects of Contracting for Construction

#### 2936.201 Evaluation of contractor performance.

The HCA must establish procedures to evaluate construction contractor performance and prepare performance reports as required by FAR 36.201.

#### 2936.209 Construction contracts with architect-engineer firms.

As required by FAR 36.209, no contract for construction of a project may be awarded to the firm that designed the project, or to its subsidiaries or affiliates, without the written approval of the Assistant Secretary for Administration and Management. Any request for approval must include the reason(s) why award to the design firm is required; an analysis of the facts involving potential or actual organizational conflicts of interest including benefits and detriments to the Government and the prospective contractor; and the measures which are to be taken to avoid, neutralize, or mitigate conflicts of interest.

### Subpart 2936.5—Contract Clauses

#### 2936.516 Quality surveys.

The HCA is authorized to make the determination regarding the impracticability of Government performance of original and final surveys as prescribed in FAR 36.516.

### Subpart 2936.6—Architect-Engineer Services

#### 2936.602 Selection of firms for architect-engineer contracts.

##### 2936.602-1 Selection criteria.

HCAs are authorized to approve the use of design competition under the conditions in FAR 36.602-1(b).

##### 2936.602-2 Evaluation boards.

HCAs must establish procedures to provide permanent or ad hoc architect-engineer evaluation boards as prescribed in FAR 36.602-2. Procedures must provide for the appointment of private practitioners of architecture, engineering, or related professions when such action is determined in writing by the HCA to be essential to meeting the Government's minimum needs.

##### 2936.602-3 Evaluation board functions.

The selection report required in FAR 36.602-3(d) must be prepared for the approval of the HCA.

##### 2936.602-4 Selection Authority.

The HCA is authorized to serve as the designated Selection Authority in accordance with FAR 36.602-1.

##### 2936.602-5 Short selection processes for contracts not to exceed \$100,000.

The selection process prescribed in FAR 36.602-5(b) must be used for architect-engineer contracts not exceeding the simplified acquisition threshold.

#### 2936.603 Collecting data on and appraising firms' qualifications.

(a) HCAs who acquire architect-engineer services must establish procedures to comply with the requirements of FAR 36.603.

(b) Copies of procedures established under paragraph (a) of this section must be submitted to the Division of Acquisition Management Services, for review and recommendation for approval to the HCA when updated. These procedures must include a list of names, addresses, and telephone numbers of offices or boards assigned to maintain architect-engineer qualification data files.

**2936.604 Performance evaluation.**

(a) The HCA must establish procedures to evaluate architect-engineer contractor performance as required in FAR 36.604. Normally, the performance report must be prepared by the contracting officer's authorized representative or other official who was responsible for monitoring contract performance and who is qualified to evaluate overall performance. DOL Agency/Office procedures must prescribe instructions for review of the report, before distribution, as prescribed in FAR 36.604(b).

(b) Performance reports must be made using Standard Form 1421, Performance Evaluation (Architect-Engineer) as prescribed in FAR 36.702(c). Details covering unsatisfactory performance, including Government notification to the contractor and written comments by the contractor, must also be attached to the report.

## **PART 2937—SERVICE CONTRACTING**

### **Subpart 2937.1—Service Contracts-General**

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2937.103 Contracting officer responsibility.  
2937.103-70 Department of Labor checklist to aid analysis and review of requirements for service contracts.

### **Subpart 2937.2—Advisory and Assistance Services**

2937.203 Policy.

### **Subpart 2937.6—Preference for Performance-Based Contracting (PBC)**

2937.602 Elements of performance-based contracting.

AUTHORITY: 5 U.S.C. 301, 40 U.S.C. 486(c).

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

### **Subpart 2937.1—Service Contracts-General**

#### **2937.103 Contracting officer responsibility.**

The HCA is responsible for establishing internal review and approval procedures for service contracts in accordance with OFPP Policy Letter 93-

1 (Reissued), "Management Oversight of Service Contracting". As defined by FAR 37.101, contracts for personal services are permitted under the circumstances in 5 U.S.C. 3109.

#### **2937.103-70 Department of Labor checklist to aid analysis and review of requirements for service contracts.**

Contracting specialists and contracting officers must work in close collaboration with the beneficiaries of the services being purchased to ensure that contractor performance meets contract requirements and performance standards.

(a) *General.* Following is a checklist to aid analysis and review of requirements for service contracts.

(1) Is the statement of work complete, with a clear-cut division of responsibility between the contracting parties?

(2) Is the statement of work discussed in terms the market can satisfy?

(3) Does the statement of work encompass all commercially available services that can meet the actual functional need (eliminates any non-essential preferences that may thwart full and open competition)?

(4) Is the statement of work performance-based to the maximum extent possible (*i.e.*, is the acquisition structured around the purpose of the work to be performed, as opposed to either the manner by which the work is to be performed or a broad and imprecise statement of work)?

(b) *Cost effectiveness.* If the response to any of the following questions is negative, the agency may not have a valid requirement or not be obtaining the requirement in the most cost effective manner.

(1) Is the statement of work written so that it supports the need for a specific service?

(2) Is the statement of work written so that it permits adequate evaluation of contractor versus in-house cost and performance?

(3) Are the choices of contract type, quality assurance plan, competition strategy, or other related acquisition strategies and procedures in the acquisition plan appropriate to ensure good